



Judge's decision was based on the finding whether claimant's present need for medical treatment was the result of either the alleged work-related injury or a new injury respondent contends claimant experienced when he was tossing a softball to his child in the spring of 1994. In the future, we request the Administrative Law Judge to make a short statement indicating the finding upon which he bases the denial of benefits. This will avoid the necessity of remand which results in a delay to all involved. Based on the foregoing, the Appeals Board has jurisdiction to review the preliminary hearing finding of the Administrative Law Judge as it falls within the jurisdictional issues of K.S.A. 44-534a.

Claimant initially injured his low back on October 26, 1993, when he was thrown from a hand jack. The respondent provided medical treatment and claimant was subsequently released. Claimant now requests the appointment of Dr. Drisko as his authorized treating physician who he first saw on April 28, 1994. Claimant next saw Dr. Drisko on June 14, 1994. Dr. Drisko's notes from that date indicate claimant returned with a recurrence of his sacroiliac dysfunction and that claimant had injured himself when throwing a softball.

The Appeals Board finds claimant's symptoms had resolved after he received the cortisone injection from Dr. Drisko in April of 1994, and that claimant did not seek any additional medical treatment until after he re-injured himself by throwing a softball. Therefore, the Administrative Law Judge was proper in denying the benefits requested.

#### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge James R. Ward entered in this proceeding on February 20, 1995, should be, and hereby is, affirmed.

#### **IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

#### **DISSENT**

The argument that claimant's present symptoms were caused by tossing a softball is weak and not supported by the evidence. Although claimant admitted he experienced a temporary exacerbation of symptoms when he tossed a softball five (5) to six (6) times to his child, the increased symptomatology soon abated. Claimant has been experiencing ongoing symptoms since the date of the accident, and medical evidence provided indicates claimant's work activities since his accident have prevented him from recovering from the initial accident. When considering the record as a whole, claimant should receive proper medical treatment for his unresolved injuries.

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BOARD MEMBER

c: Matthew S. Crowley, Topeka, KS  
Steven J. Quinn, Kansas City, MO  
James R. Ward, Administrative Law Judge  
George Gomez, Director